

STEPHEN M. THOMPSON

IBLA 84-310

Decided December 12, 1984

Appeal from a decision by the Utah State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer U 53604.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Rentals

An unsigned check tendered within the 30-day notice period provided by 43 CFR 3112.4-1(a) (1982) is not acceptable for rental payment. BLM must reject an oil and gas lease offer when a properly executed check submitted for rental payment to replace an unsigned check is received after the expiration of the 30-day period.

2. Administrative Authority: Estoppel -- Estoppel -- Federal Employees and Officers: Authority to Bind Government

The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

APPEARANCES: Stephen M. Thompson, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Stephen M. Thompson has appealed from the January 13, 1984, decision issued by the Utah State Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease offer U 53604. Appellant was the first priority applicant in the July 1983 simultaneous oil and gas drawing for parcel UT 252. BLM rejected his offer because he failed to submit timely his first year rental payment as required by 43 CFR 3112.4-1(a) (1982). 1/

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1/ While the BLM decision refers to 43 CFR 3112.6-1, the applicable regulation in effect for the July 1983 drawing was found at 43 CFR 3112.4-1 (1982). The oil and gas leasing regulations were amended effective Aug. 22, 1983 (43 FR 33648 (July 22, 1983)). The requirement of 43 CFR 3112.4-1 (1982) which was cited in the rental due notice now appears at 43 CFR 3112.6-1.

By notice dated October 5, 1983, appellant was informed that he was the successful applicant. He was also advised that if the signed lease forms and the first year's rental payment were not received by BLM within 30 days of receipt of the notice, his application would be automatically disqualified. The notice was received on October 14, 1983; thus appellant had until November 14, 1983 (November 13 being a Sunday), to comply with the stated requirements.

On November 7, 1983, executed lease forms and a check were received by BLM. The check was unsigned. BLM returned the check to appellant on November 8, 1983, to be signed and returned. A signed check was received by BLM on November 15, 1983, after the rental due date. BLM rejected appellant's offer for this reason.

Appellant contends that his rental payment was received timely. He argues that while his rental check was submitted without his signature, a BLM employee advised his secretary that a properly signed check would be acceptable if forwarded immediately. Appellant concludes that reversal of the BLM decision is appropriate "because there was technical compliance with the Bureau's procedures and verbal approval thereof."

[1] The applicable regulation, 43 CFR 3112.4-1(a) (1982), states in relevant part:

(a) The lease agreement \* \* \* shall be forwarded to the first qualified applicant for signing, together with a request for payment of the first year's rental. \* \* \* The executed lease agreement and the applicant's rental payment shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of notice. Timely receipt of the properly signed lease and rental constitutes the applicant's offer to lease.

The fact that a check was received by BLM within the 30-day period does not constitute compliance with this provision where the instrument is prepared in a manner which precludes full payment of the rental due. See B. W. Jones, 79 IBLA 295 (1984). An unsigned check is not a negotiable instrument, see 5 Anderson Uniform Commercial Code 3d § 3-104(1)(a) (1984), and is not acceptable rental payment. William H. Bevis, 52 IBLA 125 (1981). In Richard V. Bowman, 19 IBLA 261 (1975), we said at page 264:

The Department has held that it is the timely receipt of payment in the form of a negotiable check, money order or cash which prevents the automatic termination of a lease, and the tender of an unsigned check prior to the anniversary date of a lease availed the lessee "nothing," since it could not be considered as payment of the required rental before the anniversary date of the lease. Duncan Miller, A-31095 (February 2, 1970). In his opinion M-36631 of October 11, 1961, the Solicitor of the Department of the Interior said:

The basic rule of law regarding the effective date of payment by check is expressed in 40 Am. Jur. 775, payments, sec. 86, as follows:  
 "\*\* \* \* Payment by bill or check becomes absolute payment of the debt when the check is paid on presentation. On such payment of the check, the debt is deemed to have been discharged from the time when the check was given \* \* \*." [Case citations omitted.]

and "If a second check is substituted for the original one tendered as rental payment, payment can only be credited as of the time when the second check is tendered."

Because appellant's payment could only be credited as of November 15, 1983, the date the signed check was received, BLM had no alternative but to reject appellant's offer for failure to comply with 43 CFR 3112.1-4 (1982). Disqualification is automatic where the rental payment is not filed timely and BLM has no authority to exercise any discretion to consider explanations, excuses, or circumstances where an applicant has failed to comply, because the rights of the second- and third-qualified applicants have intervened. Paul C. Deters, 80 IBLA 121 (1984); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). In order to ensure fairness and uniformity to all applicants in the simultaneous drawing, strict compliance with the regulations is mandatory. Tom Hurd, 80 IBLA 107 (1984); Thomas E. Lewis, 70 IBLA 69 (1983).

[2] We find no merit to appellant's argument which implies that BLM approved submission of appellant's rental payment after the 30-day period. Appellant's secretary was advised that a signed check would be accepted if forwarded immediately. Appellant was mistaken to interpret this statement to say that a signed rental check would be acceptable if received after the 30-day period. Even if that were the case, no estoppel claim would lie against the Government to allow appellant to avoid automatic disqualification of his offer.

One of the essential elements of estoppel is that the party asserting it must be ignorant of the material facts. In this case, the fact about which appellant may have been misled was the regulatory filing deadline. However, appellant cannot properly allege that he was ignorant of the true facts.

The applicable regulation, 43 CFR 3112-1.4 (1982), referenced in the rental due notice, clearly put appellant on notice that he had 30 days from receipt of that notice to submit his rental payment. In addition, the Board has repeatedly held that reliance on erroneous information given by an employee or the Department cannot serve to excuse compliance with the applicable law and regulations, nor can it relieve the claimant of the consequences imposed by statute or regulation for failure to comply with such requirements. See John Plutt, Jr., 53 IBLA 313 (1981).

Inasmuch as appellant failed to comply with the regulatory requirements of 43 CFR 3112.4-1(a) (1982), his offer to lease was properly rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Gail M. Frazier  
Administrative Judge

We concur:

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Franklin D. Arness  
Administrative Judge

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Will A. Irwin  
Administrative Judge

